

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Yu	Team: Squad #16	CCRB Case #: 201608675	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 10/14/2016 7:30 AM	Location of Incident: [REDACTED]	Precinct: 07	18 Mo. SOL 4/14/2018	EO SOL 4/14/2018	
Date/Time CV Reported Fri, 10/14/2016 1:10 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 10/14/2016 1:10 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Joseph Russo	4054	939390	WARRSEC
2. DT3 Thomas Napolitano	3282	940682	WARRSEC
3. Officers			WARRSEC

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Ravi Narayan	04407	930799	WARRSEC
2. SGT Raymond Tomins	05336	902480	WARRSEC
3. DT3 Anthony Giretti	4617	938568	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Thomas Napolitano	Abuse: Detective Thomas Napolitano damaged § 87(2)(b)'s property.	[REDACTED]
B.DT3 Thomas Napolitano	Abuse: Detective Thomas Napolitano entered and searched § 87(2)(b) in Manhattan.	[REDACTED]
C. Officers	Abuse: Officers entered and searched § 87(2)(b) in Manhattan.	[REDACTED]
D.DT3 Joseph Russo	Discourtesy: Detective Joseph Russo spoke discourteously to § 87(2)(b)	[REDACTED]

Case Summary

On October 14, 2016, § 87(2)(b) filed this complaint with the CCRB via telephone. § 87(2)(b) did not witness the incident.

On October 14, 2016, at approximately 7:30 a.m., Det. Thomas Napolitano, Sgt. Raymond Tomins, Det. Ravi Narayan, Det. Joseph Russo, and Det. Anthony Giretti, of the Brooklyn Warrant Section, arrived at § 87(2)(b) in Manhattan, based on a Parole warrant for § 87(2)(b). At the location, Det. Napolitano removed the peephole from the door (**Allegation A**). After the officers knocked on the door several times, § 87(2)(b) opened the door and Det. Napolitano and the officers entered and searched the location (**Allegation B and Allegation C**). During the search of the residence, the officers found § 87(2)(b) inside a bedroom hiding under the bed. § 87(2)(b) was handcuffed inside the residence. § 87(2)(b) alleged that Det. Russo stated, “Full of shit,” and “Fucking around,” during the incident (**Allegation D**).

Upon verifying his identity, the officers determined that § 87(2)(b) was not the subject of the Parole warrant, but found that he had an open ICARD for probable cause to arrest in regards to an unrelated incident. § 87(2)(b) was transported to the 42nd Precinct stationhouse and was released from the stationhouse the same day. § 87(2)(b)'s arrest was not processed and he was not issued a summons during this incident; the officers were informed by the 42nd Precinct Detective Squad that the § 87(2)(b) was no longer wanted in connection with their case.

This case contains video evidence, a SnagIt copy of which has been placed below. Please note that the original video can be found at Board Review 18 and the transcription can be found at Board Review 05. This video was recorded by § 87(2)(b).



2017-02-14_13-07-04.mp4

NYCHA video footage was also obtained. However, it did not contain any relevant footage of the incident.

This case exceeds 90 days due to initial difficulties with identifying the subject officers' correct command given that the officers were assigned to a different borough than of the incident location. Furthermore, there was also a seven day delay in receiving the NYPD documents from the subject officers' command.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation because § 87(2)(b) mentioned that he was in the process of seeking an attorney to file a civil lawsuit against the NYPD in regards to this incident.
- As of February 16, 2017, none of the civilians involved in this incident has filed a Notice of Claim (Board Review 29).

- After receiving the relevant Roll Call from Brooklyn Warrants, the MOS Photo Viewing Machine was used to cross-referencing all of the officers listed with the officers depicted in the video provided by § 87(2)(b). The query identified three officers, Det. Narayan, Det. Russo, and Sgt. Tomins, who all resembled the officers from the video.
- Additionally, during a phone call to the Warrant Section command for additional information in regards to the associated documents pertaining to the Parole case, an administrative officer voluntarily provided the Warrant Investigative Data. This document confirmed that Det. Napolitano and Sgt. Tomins were assigned to the Parole investigation pertaining to the CCRB incident.
- After reviewing the video footage during his CCRB interview, Det. Napolitano identified the last officer, who had not been identified at the time, as Det. Giretti.
- § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
- While viewing the video footage during his CCRB interview, § 87(2)(b) pointed at the officer on the screen who he described as the officer wearing a grey sweater and stated that this was the officer who used profanities. § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]

Allegations not pleaded

Refusal to show search warrant:

This allegation has not been pleaded given that the officers were in possession of a parole warrant and not a search warrant.

Detainment:

§ 87(2)(g) [REDACTED] after finding § 87(2)(b) [REDACTED] under the bed, the officers conducted a computer check of his name and found that he had an active ICARD which he was listed as a perpetrator with probable cause to arrest. This was verified by the NYPD DAS Snapshot of § 87(2)(b) [REDACTED] (Board Review 16). § 87(2)(b) [REDACTED] was apprehended due to the ICARD and taken back to the stationhouse.

Allegation A –Abuse of Authority: Detective Thomas Napolitano damaged § 87(2)(b) [REDACTED]s property.

Allegation B –Abuse of Authority: Detective Thomas Napolitano entered and searched § 87(2)(b) [REDACTED] in Manhattan.

Allegation C –Abuse of Authority: Officers entered and searched § 87(2)(b) [REDACTED] in Manhattan.

It is undisputed that § 87(2)(b) [REDACTED] did not immediately open the door upon the officers knocking. At the time of incident, § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] were all inside § 87(2)(b) [REDACTED]. The investigation established that the peephole was removed during the incident. When § 87(2)(b) [REDACTED] opened the door, the officers entered and searched the apartment in an attempt to apprehend § 87(2)(b) [REDACTED] who was a Parole absconder. Upon searching the apartment, § 87(2)(b) [REDACTED] was found under a bed.

In her CCRB statement, § 87(2)(b) stated that she heard knocking for approximately five minutes before she heard the peephole of the door fall on the ground (Board Review 02). Upon § 87(2)(b) going to the door, she saw the peephole on the ground. § 87(2)(b) opened the door widely after noticing that they were officers. When the officers told her to step aside, she complied by stepping aside and the officers entered. During the incident, she was later informed by § 87(2)(b) that the officers were looking for § 87(2)(b)'s former husband, § 87(2)(b).

§ 87(2)(b) stated that he was in § 87(2)(b) and § 87(2)(b)'s room when he heard knocking and admitted that he was lying next to the side of the bed (Board Review 01). During his interview, he stated he assumed that the officers were looking for him in regards to a dispute he had with his girlfriend, § 87(2)(b). § 87(2)(b) stated that at the 42nd Precinct stationhouse, the officers stated that they were looking for an individual, identified via the investigation as § 87(2)(b). He was informed by his family members that § 87(2)(b) was § 87(2)(b)'s former husband.

In a telephone statement, § 87(2)(b) affirmed that § 87(2)(b) is her former husband and that he had not lived at her address for approximately five years (Board Review 19).

All of the officers interviewed were assigned to the Joint Absconder Warrant Section within the Brooklyn Warrant Section during this incident. Their duties involved investigating individuals who were wanted in connection with parole warrants.

All of the officers interviewed and the Parole Warrant Investigative Data indicated that Det. Napolitano was the lead investigator in regards to the Parole warrant investigation for § 87(2)(b). The Parole Investigative Data included the information of the parolee, the assigned investigator, and also documented the steps taken throughout the investigation (Board Review 15). During the CCRB investigation, the Parole warrant issued for § 87(2)(b) was obtained from the Department of Corrections Parole Division (Board Review 14).

Prior to having knowledge that § 87(2)(b) was possibly at § 87(2)(b), Det. Napolitano learned from speaking with his family member that § 87(2)(b) was possibly going to be with either his girlfriend or wife in Manhattan (Board Review 08). Upon database queries of DAS-LITE, CLO, E-Justice, Triple III, and past arrests, Det. Napolitano found that § 87(2)(b) and § 87(2)(b) has had multiple prior Domestic Incident Reports and found that § 87(2)(b) had listed his address as 95 Baruch Drive during multiple queries. On the date of incident, prior to entering § 87(2)(b), Det. Napolitano stated that after showing a photo of § 87(2)(b) to a resident, the resident informed him that § 87(2)(b) was at the location by pointing up and saying § 87(2)(b) floor.

Det. Napolitano stated that upon knocking on the door of § 87(2)(b) he announced, "Police conducting an investigation, can someone come to do the door?" At this point, Det. Napolitano heard a lot of movement and heard a female from inside say, "Police, hide." After hearing this, Det. Napolitano removed the peephole from the door by unscrewing it. Det. Napolitano stated that the peephole was removed for his safety given that they were going after a violent subject. Sgt. Tomins also stated that he heard movements from inside the residence (Board Review 10).

Det. Russo and Det. Giretti both stated that Det. Napolitano informed them that he heard movements from inside at the time (Board Review 09 and 13). Det. Narayan said that he heard a female's voice inside the apartment saying that she was not letting them in (Board Review 11 and 12). Det. Napolitano explained that the Public Housing doors peepholes which consisted of two pieces that are screwed together. Det. Napolitano stated that for his safety, he unscrewed the peephole to look inside the apartment. Det. Napolitano added that they were going after a violent subject who was a parole absconder and had been arrested for being in possession of a firearm. Upon looking through the peephole, Det. Napolitano saw someone, who he believed to be § 87(2)(b) running from one end to the other end of the apartment. After approximately 30 seconds, § 87(2)(b) opened the door and the officers entered. Upon searching the apartment, the officers found § 87(2)(b) under the bed. After § 87(2)(b) was found, a secondary search was conducted which consisted of looking into places where a person could hide. § 87(2)(b) was not found at the residence during this incident.

As per the NYS Criminal Procedure Law (CPL) 690.50 §, a warrant of arrest may be executed any day of the week and any hour of the day or night (Board Review 20). In order to execute the arrest, the police officer may enter any premises in which he reasonably believes he defendant to be present; provided, however that where the premises in which the officer reasonably believes the defendant to be in present is the dwelling of a third party who is not the subject of the arrest warrant, the officer must give , or make reasonable effort to give, notice of his authority and purpose to an occupant thereof, unless there is reasonable cause to believe that giving of such notice will: (a) Result in the defendant escaping or attempting to escape; or (b) Endanger the life or safety of the officer or another person; or (c) Result in the destruction, damaging or secretion of material evidence.

People v. McBride, 14 N.Y.3d 440 (2010), officers may make warrantless entry into a home given the existence of exigent circumstances (Board Review 21). Six factors were established in determining whether exigent circumstances are present: 1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that the suspect will escape if not swiftly apprehended; and (6) the peaceful circumstances of the entry.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation D –Discourtesy: Detective Joseph Russo spoke discourteously to § 87(2)(b)

It is in dispute whether or not Det. Russo used profanities when speaking to § 87(2)(b). Video evidence captured a male’s voice saying, “full of shit,” and “fucking around” (depicted between 00:01 - 00:04 seconds of the SnagIt video found in Board Review 07). However, it is in dispute as to who made the aforementioned statements.

After reviewing the video footage during his CCRB interview, § 87(2)(b) stated that he heard Det. Russo using profanities (Board Review 01).

During her CCRB testimony, § 87(2)(b) did not allege hearing any officers use any profanities (Board Review 02). After reviewing the video, § 87(2)(b) stated that she did not know who stated “full of shit,” saying the word “fucking,” and did not recall hearing that conversation.

Neither § 87(2)(b) nor § 87(2)(b) provided a sworn testimony to the CCRB for additional information in regards to whether or not they heard any officers using any profanities. In their phone statements, neither § 87(2)(b) nor § 87(2)(b) alleged that any officers used any profanities during the incident (Board Review 03 and 04).

Det. Russo stated that he did not believe he used any profanities during the incident and none of the other officers interviewed stated that they heard any officers using profanities (Board Review 08-13). All of the officers interviewed had an opportunity to review the video footage. None of the officers interviewed stated that they recognized Det. Russo’s voice captured as the person using profanity.

§ 87(2)(g)

Squad: 16

Investigator:	_____	_____	_____
	Signature	Print	Date

Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date